

Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 05

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 06 HOUSING INSURANCE

Notice of Proposed Action [17-195-P]

The Secretary of Housing and Community Development proposes to:

- (1) Amend Regulation .04 under COMAR 05.06.01 Maryland Housing Fund—Multifamily Program;
- (2) Amend Regulation .04 under COMAR 05.06.06 Single Family Insurance Program; and
- (3) Adopt new Regulations .01—.09 under a new chapter, COMAR 05.06.09 Business Reserve Insurance.

Statement of Purpose

The purpose of this action is to prescribe the policies, procedures, and authorization for the issuance of mortgage insurance and credit enhancement by the Maryland Housing Fund for business project loans. In addition, this action establishes the business insurance reserve to enable the Maryland Housing Fund to issue a broader range of mortgage insurance.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action will make it possible for the Maryland Housing Fund to offer more types of loan insurance products for public and private lenders than are currently permitted under the existing regulatory insurance reserves. The Maryland Housing Fund's current ability to issue insurance is limited to housing loans because existing reserves are specific to the types of loans that can be insured, and various agreements with the

Community Development Administration and its mortgage revenue bondholders place limits on the insurance. Recent statutory changes in 2016 expanded the Maryland Housing Fund's ability to provide insurance for business project loans. New products may include insurance for business owners who lack resources or are otherwise not able to obtain a competitive interest rate when starting or expanding a business. These additional products will allow new and existing businesses new opportunities by providing access to competitive loans that they might not be able to obtain from the existing private market or the US Small Business Administration.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The Maryland Housing Fund will receive revenue from the premiums charged for mortgage insurance. The number of and amounts of the loans that will be insured are indeterminable. The Maryland Housing Fund will incur some minor administrative costs, but these costs will be less than the revenue generated.

Administrative costs are already budgeted. No additional costs will be incurred administratively because of these regulations.

D. Private lenders should benefit from the proposed regulations because additional businesses may be eligible for loans insured by the Maryland Housing Fund. The actual amount of the increase in loans made by private lenders is indeterminable.

F. The proposed regulations are expected to result in additional types of mortgage insurance products available for business projects that are not currently being served. The proposed regulations are expected to result in an increase in business projects and growth by expanding the availability of loans. The actual increase is indeterminable.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

The proposed action will have a positive economic impact on small businesses by expanding the availability of capital that is needed for the establishment and expansion of small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Allen Cartwright, Director, Division of Credit Assurance, Department of Housing and Community Development, 7800 Harkins Road, Lanham, Maryland 20706, or call 301-429-7629, or email to allen.cartwright@maryland.gov. Comments will be accepted through January 22, 2018. A public hearing has not been scheduled.

05.06.01 Maryland Housing Fund — Multifamily Program

Authority: Housing and Community Development Article, Title 3, Subtitle 2, Annotated Code of Maryland

.04 Reserves.

A. Types of Reserves. Insurance issued by the Fund is backed by an insurance reserve. There currently exist [six] *seven* separate reserves, one for multifamily insurance, three for single family insurance, one for general use, *one for business insurance*, and an unallocated reserve for moneys not yet transferred to a specific reserve. More specifically, separate reserve funds have been established to back the following categories of insurance:

- (1)—(4) (text unchanged)
- (5) General reserve insurance; [and]
- (6) *Business reserve insurance*; and
- [(6)] (7) (text unchanged)

B. (text unchanged)

C. Earnings on Reserves. Investment earnings on each of the [five] *seven* reserves which are retained by the Fund are credited to the unallocated reserve. The moneys in the unallocated reserve may be:

- (1)—(4) (text unchanged)

D. (text unchanged)

05.06.06 Single Family Insurance Program

Authority: Housing and Community Development Article, Title 3, Subtitle 2, Annotated Code of Maryland

.04 Reserves.

A. Types of Reserves.

- (1) (text unchanged)

(2) There currently exist the following [six] *seven* separate reserves:

- (a)—(b) (text unchanged)
- (c) One for general reserve insurance; [and]
- (d) *One for business reserve insurance*; and
- [(d)] (e) (text unchanged)

(3) (text unchanged)

B. (text unchanged)

C. Earnings on the Reserves. All investment earnings on each of the [five] *seven* reserves which are retained by the Fund are credited to the unallocated reserve. The moneys in the unallocated reserve may be:

- (1)—(4) (text unchanged)

D. (text unchanged)

05.06.09 Business Reserve Insurance

Authority: Housing and Community Development Article, §3-207(a), Annotated Code of Maryland

.01 General.

These regulations set forth the policies, procedures, and authorization for issuance of loan insurance and credit enhancement under the business reserve established in COMAR 05.06.01.04A and 05.06.06.04A.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means Housing and Community Development Article, Title 3, Subtitle 2, Annotated Code of Maryland, as amended.

(2) Business Project.

(a) "Business project" means a project located in an area designated as a priority funding area under §5-7B-02 of the State Finance and Procurement Article.

(b) "Business project" means a project that is:

(i) Acquired, owned, developed, constructed, reconstructed, rehabilitated, or improved by a person or an entity for the purposes of carrying on a business whether or not for profit; or

(ii) Eligible for funding from the Neighborhood Business Development Fund under Housing and Community Development Article, §6-310, Annotated Code of Maryland.

(3) "Department" means the Department of Housing and Community Development.

(4) "Fund" means the Maryland Housing Fund, and, when appropriate, its authorized officers or personnel.

(5) Mortgage.

(a) "Mortgage" means a written instrument evidencing or creating a lien against real property to provide collateral to secure the repayment of a debt.

(b) "Mortgage" includes a deed of trust.

(6) Nonprofit Entity.

(a) "Nonprofit entity" means any organization exempt from taxation under the Internal Revenue Code of the United States, 26 U.S.C. §501(c).

(b) "Nonprofit entity" includes local development agencies and local development corporations, as defined in Housing and Community Development Article, §4-201, Annotated Code of Maryland, and organizations exempt by reason of a charitable or public purpose.

(c) "Nonprofit entity" does not include limited dividend corporations or partnerships.

(7) "Secretary" means the Secretary of Housing and Community Development or the Secretary's designee.

.03 Eligible Property.

A. Real property financed by loans insured by the Fund shall:

- (1) Have clear and merchantable title acceptable to the Fund;
- (2) Conform to all applicable federal, State, and local building, zoning, environmental, health, and housing codes;
- (3) Be insured with hazard insurance issued by a company that is approved by the State Insurance Commissioner and, when applicable, flood insurance;
- (4) Have an appraised value that is satisfactory to the Fund;
- (5) Be secured by a lien against the mortgaged property or other collateral acceptable to the Fund; and
- (6) Meet any other standards of the Fund.

B. Personal property financed by loans insured by the Fund shall:

- (1) Have clear and merchantable title acceptable to the Fund;
- (2) Have an appraised value that is satisfactory to the Fund;
- (3) Be secured by a lien against real property, personal property or other collateral acceptable to the Fund; and
- (4) Meet any other standards of the Fund.

C. Loan to business project for credit, operating costs and administrative costs insured by the Fund shall:

- (1) Be secured by a lien against real property, personal property or other collateral acceptable to the Fund; and
- (2) Meet any other standards of the Fund.

.04 Eligible Borrower.

A. A borrower may be an individual, partnership, or any other type of legal entity.

B. A borrower shall establish, to the satisfaction of the Fund, the capacity to meet the financial obligations of the loan.

C. A borrower shall have maintained a credit standing and history of financial management that is acceptable to the Fund.

.05 Eligible Lenders.

A. The Department, or any agency of the Department, is an eligible lender approved for insurance issued by the Fund under this chapter.

B. All other lenders shall meet the eligibility requirements of §C or D of this regulation in order to be approved for insurance issued by the Fund.

C. The Fund may approve a lender that is authorized to conduct business in Maryland and that executes a certification that it is:

- (1) A financial institution that has accounts insured by any agency of the United States; or
- (2) An institutional lender approved under a federal mortgage or business loan insurance agency.

D. Any for-profit entity, nonprofit entity, or public agency that, in the opinion of the Fund, has as a primary or substantial function of its operation, the making of business project loans, may be approved if it:

- (1) Presents evidence satisfactory to the Fund of:
 - (a) Responsibility;
 - (b) Financial adequacy;
 - (c) Requisite administrative, technical, and loan servicing capabilities; and
- (2) Submits an application and all supporting documentation that the Fund may require.

.06 Insurance.

A. Application. A lender shall submit an application, in the form prescribed by the Fund, which shall contain a complete credit package and any other documentation required by the Fund.

B. Underwriting and Appraisal. An application for insurance received from an approved lender may be subject to underwriting and appraisal review in accordance with the requirements of the Fund.

C. Scope of Insurance Coverage.

(1) Insurance coverage is limited to economic loss due to a monetary default and does not include loss due to casualty or title risk.

(2) Expenses incurred for property repair or replacement resulting from casualty loss, including losses due to negligence, flood, fire, termites, vandalism, theft, and defective construction, are not eligible for coverage.

(3) Expenses incurred by the lender in the preservation and normal maintenance of an insured property may be covered in accordance with the terms and conditions of the applicable insurance policy governing the insured loan.

D. Insurance on business project loans may be offered in the following forms:

- (1) Mortgage or loan insurance;
- (2) Credit enhancement;
- (3) Loan guaranty; or
- (4) Other type of insurance as approved by the Fund covering economic loss due to monetary default.

E. The Fund may offer insurance on loans that are within a pool of loans as described in the applicable insurance policy.

F. The Fund may enter into reinsurance, coinsurance, and risk-sharing arrangements with other insurers and lenders, as approved by the Secretary.

G. To maintain insurance coverage on an existing loan, the following transactions require prior approval of the Fund on terms and conditions acceptable to the Fund:

- (1) A transfer of any interest in the secured property;
- (2) An assignment of the insured loan;
- (3) An assumption of an insured loan; or
- (4) Any change or modification of the terms of the insured loan.

.07 Premiums.

A. Premiums for insurance shall be determined by the Fund from time to time for various programs and types of insurance.

B. Premiums may be set at different levels for different categories of loans and loan programs depending on the risk factors, which may include the:

- (1) Depth of insurance coverage;
- (2) Length of loan term;
- (3) Financial capability of the borrower;
- (4) Credit rating of the borrower; and
- (5) Condition and type of collateral securing loan.

C. The Fund shall maintain a publicly available premium rate sheet with a stated effective date for the premiums.

.08 Default Procedures.

A. The insured lender shall follow the procedures contained in the insurance policy or agreement upon default of an insured mortgage.

B. The Fund may require a lender at any time to assign a delinquent loan to the Fund and file a claim in the full amount of the insurance.

C. The right of the Fund to pursue a borrower for deficiency or loss exists in every case to the extent allowed by law and may be enforced at the discretion of the Fund.

D. The Fund may refuse payment of a claim on the basis of fraud, misrepresentation, or material error or omission with respect to any claim.

.09 General Provisions.

A. Waiver. The Secretary may waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with the Act or with agreements to which the Fund may be subject if:

- (1) Conformance to the requirements of any federal, State, or local program in connection with a loan necessitates a waiver or variance of a regulation; or

(2) In the written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

B. Reconsideration.

(1) An applicant or a lender may request reconsideration of a Fund decision that a loan or claim is not eligible under this chapter by submitting a written request to the Secretary within 30 days following the date of the Fund's written decision. The request for reconsideration shall address each reason for the decision and provide documentation that supports reasons for reconsideration of the issues. The Secretary shall respond in writing to the request for reconsideration within 30 days of receiving the request.

(2) An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

(3) The Secretary, in the Secretary's sole discretion, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications a request for reconsideration of a determination of ineligibility.

C. False Statements. A borrower or lender who knowingly makes, or causes to be made, a false statement or report, whether in the nature of an understatement or overstatement of financial condition or any other fact material to the Department's action, is subject to cancellation of insurance, in addition to the criminal penalties authorized by the Act.

D. Delegation. The Secretary may delegate to the Director of the Fund or to any other official or employee of the Department or the Fund the authority to execute or approve any insurance documents or Fund certificates.

KENNETH C. HOLT

Secretary of Housing and Community Development

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.08 Shellfish — General

Authority: Natural Resources Article, §4-2A-03, Annotated Code of Maryland

Notice of Proposed Action [17-310-P]

The Secretary of Natural Resources proposes to amend Regulation .06 under COMAR 08.02.08 Shellfish — General.

Statement of Purpose

The purpose of this action is to amend commercial management measures for Jonah Crab (*Cancer borealis*). The proposed changes are in response to Addendum II to the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Jonah Crab. The Atlantic States Marine Fisheries Commission (ASMFC) coordinates the interstate management of Jonah crab (*Cancer borealis*) in state waters (from 0—3 miles offshore). Jonah crabs are managed through an Interstate Fishery Management Plan, which was approved in August 2015 under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (1993). The Atlantic States Marine Fisheries Commission makes changes to the fishery management plan based on the current status of the stock, biology, fishery, and economic and management considerations.

Addendum II to the fishery management plan develops a coastwide standard for claw harvest and establishes requirements for the bycatch fishery. Claw harvest is permitted coastwide so there is no longer a need for a separate claw permit. The proposed action removes the claw landing permit. Addendum II also allows fishermen to remove claws at sea, but establishes a minimum size for harvests of over 5 gallons. The proposed action establishes the limits. If the claws are removed at sea and the volume of claws landed is greater than 5 gallons, the minimum claw length is 2-3/4 inches, measured from the elbow to the tip of the bottom claw. If the volume of claws landed is less than 5 gallons or if the claws are removed after landing, there is no minimum size. The reason for the minimum length is to ensure that the harvest of female crab claws will be minimal. Female Jonah crabs are smaller than males and the minimum claw length provides assurance that the claws will be taken from male crabs.

In order to reflect the intention of the bycatch limit, to account for Jonah crabs caught while targeting another species, Addendum II requires the total pounds of Jonah crabs caught as bycatch to weigh less than the total amount of the targeted species at all times during a fishing trip. The proposed action combines the catch limits of harvesting from gear other than a federally tagged lobster trap with the new weight requirement.

Fishermen may still harvest whole Jonah crabs which meet the 4.75" minimum carapace width requirement and there are no changes to the limits for harvesting Jonah crabs with a federally tagged lobster trap.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action will positively impact the commercial fishery.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
<hr/>		
	Benefit (+) Cost (-)	Magnitude
<hr/>		
D. On regulated industries or trade groups:		
(1) Removal of claw permit	(+)	Indeterminable
(2) Claw size limits	NONE	
(3) Bycatch requirement	NONE	
(4) Commercial industry	(+)	\$150,000 or more per year
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	